

Office of the Minister for the Environment

Chair

Cabinet Economic Growth and Infrastructure Committee

**Proposed National Policy Statement on Indigenous Biodiversity:
Proposal to release for public consultation**

Proposal

1. This paper seeks agreement to release the proposed National Policy Statement on Indigenous Biodiversity (NPS) for public consultation. Following public consultation on the proposed NPS I will report back to Cabinet with a report on the submissions and a revised NPS seeking your approval to notify it in the Gazette

Executive summary

2. Maintaining New Zealand's indigenous biodiversity is a matter of national importance. Our unique flora and fauna are highly valued by New Zealanders and hold special significance to Māori. Our indigenous biodiversity has significant economic value. It directly and indirectly supports our agricultural, horticultural and tourism based economy and international perceptions about the way that we manage it can affect the value of our 'clean and green' brand.
3. Biodiversity decline in New Zealand is a pervasive environmental issue, of critical importance. 85 percent of our original lowland forests and wetlands are now gone, and at least 20 percent of indigenous bird species are threatened, as are 10 percent of reptiles, three of our four frog species and five percent of vascular plant species.¹
4. The main causes of native biodiversity loss today are severely reduced lowland habitat, declining quality of many of the remaining land and freshwater habitats and the impacts of pests and weeds.
5. The OECD has stated "New Zealand has a special responsibility for biodiversity conservation, since a high percentage of its 80,000 species are endemic and unique." Our uniqueness is primarily as a result of our isolated evolution and the diversity of our landscapes.
6. A May 2010 study led by the University of Adelaide's Environment Institute ranked New Zealand as having the highest proportion of threatened species of the 179 countries surveyed.²
7. There are a number of rare and threatened environment types, such as wetlands and lowland forests, which are not well represented in our conservation estate. Many of these rare and threatened environment types are located on private land, and lack formal protection.

¹ OECD (2007) OECD Environmental Performance Reviews – New Zealand.

² The study is published in science journal "PLOS ONE" and can be accessed at:
www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0010440

8. Management of biodiversity on private land can be contentious and challenging. Although councils, landowners and NGO's are engaging in voluntary actions to conserve biodiversity the evidence suggests that biodiversity continues to decline. There are also increasing pressures on biodiversity from intensified land uses.
9. The Resource Management Act (RMA) requires councils to manage biodiversity on private land. The protection of significant vegetation and the significant habitats of indigenous fauna is a matter of national importance under section 6(c) of the RMA.
10. Identification of significant biodiversity is a prerequisite to effective management. The approach used by councils to identify biodiversity is inconsistent across the country. Some councils have good criteria in their plans for identifying significant biodiversity, while the criteria used by others appears inadequate, especially in relation to biodiversity that is significant at a national (rather than district or regional) level. There are a small number of councils that do not have any criteria in their plans for identifying significant biodiversity.
11. A NPS on Indigenous Biodiversity has been drafted to improve the way that biodiversity is managed under the RMA (appendix 1). An NPS is a flexible tool which provides a decision-making framework within which councils formulate RMA plan provisions and make decisions. An NPS sets out the government's overall policy direction whilst also allowing flexibility in how councils and landowners achieve their biodiversity goals. Biodiversity offsets have been included as one way of achieving this flexibility.
12. A NPS on biodiversity is consistent with National's 2008 environmental policy manifesto and our 2009 agreement with the Māori Party on the Emissions Trading Scheme. The Climate Change Response (Targets) Notice (2008) sets a target to promulgate a NPS on biodiversity by 1 February 2011.
13. This proposed NPS sets out the Government's bottom-line expectations for managing biodiversity. It adopts a supportive approach which recognises the existing good practices of local authorities, and provides direction only when required to secure base-line performance. It has been designed to strike a sensible balance between protecting important biodiversity, recognising the rights and responsibilities of landowners, and the broader national interests that are served by providing landowners with flexibility in how they manage biodiversity on their land.

Background

Why biodiversity matters

14. New Zealand's indigenous biodiversity is important culturally, scientifically and economically. Our landscapes and unique flora and fauna shape our national identity, and are highly valued by New Zealanders and hold special significance to Māori.
15. New Zealand's indigenous biodiversity has significant economic value. It is integral to our agricultural, horticultural and tourism dominated economy. New Zealand exports a range of products that are based on our indigenous flora and fauna; manuka honey is one example. Our indigenous biodiversity provides a unique selling point for our international tourism industry and international perceptions about the way that we manage our biodiversity can affect the value of our 'clean green' brand.

16. New Zealand's land based production systems are dependent on biological resources and the natural processes that sustain them. Indigenous biodiversity is a vital component of healthy and robust ecosystems. These ecosystems provide a range of essential free services, including purifying water, decomposing wastes, cycling of nutrients, the creation and maintenance of soils, pollination, regulating the climate and reducing flooding.
17. A 1997 study by economists estimated the annual value to the economy of indigenous biodiversity on land was \$46 billion in 1994. This was made up of \$9 billion from direct uses (including food and raw materials from agriculture and horticulture) \$30 billion from indirect uses of ecosystem services, and \$7 billion from passive values. In comparison, Gross Domestic Product that same year was \$84 billion.
18. Many countries face threats to biodiversity but New Zealand's challenge is bigger than most. New Zealand has a very high proportion of endemic species (species that are found nowhere else on earth). All three species of New Zealand bat are endemic, as are all four frogs, all 60 reptiles, more than 90 per cent of insects and a similar percentage of marine molluscs, about 80 percent of vascular plants, 87 percent of terrestrial birds and 44 percent of all breeding seabirds. By comparison, Great Britain, which separated from continental Europe only 10,000 years ago, has only two endemic species – one plant and one animal.
19. This high degree of endemism is a result of isolated evolution, an absence of mammalian predators and the diversity of New Zealand's land and seascapes. The ecosystems in which these species live are also highly distinctive. Much of our indigenous biodiversity cannot be conserved in nature anywhere else in the world.
20. New Zealand has been identified as one of only 34 biodiversity 'hotspots' worldwide. To qualify as a hotspot, a region must contain at least 1,500 species of endemic vascular plants (> 0.5 percent of the world's total), and it has to have lost at least 70 percent of its original habitat.
21. New Zealand ratified the international Convention on Biological Diversity in 1993. Signatory nations are required to prepare national strategies or plans that set national goals to implement these goals. The 2000 New Zealand Biodiversity Strategy establishes national goals to:
 - Turn the tide on the decline of the country's indigenous biodiversity
 - Maintain and restore a full range of remaining habitats and ecosystems, and viable populations of all native species.

Current management framework

22. The Resource Management Act 1991 (RMA) is the principal legislation governing the use of New Zealand's natural resources on private land, and has a key role in managing New Zealand's biodiversity. The protection of "areas of significant indigenous vegetation and significant habitats of indigenous fauna" is listed as a "Matter of national importance" in section 6 (c) of the RMA. Under sections 30 and 31, both regional councils and territorial authorities have responsibility for the maintenance of biodiversity.

23. Non-statutory tools also have an important role in the management of biodiversity on private land. These include trusts and funds such as the Queen Elizabeth II Trust, Nga Whenua Rahui and the Nature Heritage Fund, as well as non-regulatory guidance. The Department of Conservation also maintains a website and an advice service about biodiversity funds, including the Biodiversity Condition and Advice funds. In addition, the Ministry for the Environment has recently released updated guidance on biodiversity management for councils. Many councils provide funds for advice and community care groups.

The state of our biodiversity

24. Although New Zealand's public conservation lands cover 30 percent of our total land area, most is in higher (and usually less productive) country. Our conservation estate therefore, does not protect a representative sample of habitats – or by extension, biodiversity. Coastal and lowland forest, scrubland dune systems, freshwater wetlands, streams and indigenous riparian habitat are largely dependent on private land. A review undertaken in 2002³ found that while active conservation management was increasing on private land, overall, there was ongoing decline and loss of indigenous biodiversity.
25. The seven indicator species (kiwi; kaka, short-tailed bat, kokako, mohua, wrybill and dactylanthus) tracked in the State of the Environment report (last published in 2008) are all showing marked declines since the 1970s. For example, the distribution of the kokako is only 2 percent of its original pre-human distribution, while the short-tailed bat is only 17 percent. The kiwi is at 17 percent of its original distribution.
26. A May 2010 study led by the University of Adelaide's Environment Institute ranked New Zealand as having the highest proportion of threatened species of the 179 countries surveyed. National monitoring of vegetation loss (a surrogate measure for biodiversity loss) was conducted between 1996/97 to 2001/02. The research showed a significant (17, 200 ha) net loss of indigenous cover over the five year period. We have less comprehensive information about trends vegetation loss after 2002, due to the cessation of the national monitoring programme. The information we do have indicates that biodiversity decline continues and may have in fact accelerated.
27. Although we do not have a complete picture of the degree of biodiversity decline since 2002, the largely irrevocable nature of biodiversity loss means that there is a high risk inherent in waiting for more complete data before making further interventions. Once key components of biodiversity are lost, no amount of future effort or expenditure can revive them.
28. There are a range of emerging pressures on biodiversity which increase the risk of ongoing and potentially accelerating biodiversity loss. These pressures include freeholding of under-represented vegetation or habitats under the High Country Tenure Review, and intensification and expansion of dairy farming, particularly in the central North Island, Otago and Southland.

³ Davis, M (2002). The State of Indigenous Biodiversity Outside Crown Conservation Lands in New Zealand. Unpublished report prepared for the Ministry for the Environment, Wellington.

⁴ Walker, S et al, (2006) Recent Loss of Indigenous Land cover in NZ. NZ Journal of Ecology

Issues and opportunities

29. There is an opportunity to improve the way that biodiversity is managed under the RMA. A review of council practice undertaken by the Ministry for the Environment in 2004 and followed up this year found that provisions in plans for managing the effects on biodiversity are inconsistent across the country. Some councils are well advanced in providing for biodiversity protection through regulation, while the approach taken by others appears inadequate.
30. Identification of significant biodiversity is a prerequisite to effective management. The approach used by councils to identify biodiversity is inconsistent across the country. Some councils have good criteria in their plans for identifying significant biodiversity, while the criteria used by others is unclear or considered inadequate, especially in relation to biodiversity that is significant at a national (rather than district or regional) level. There are a small number of councils that do not have any criteria in their plans for identifying significant biodiversity.
31. There has been litigation between councils and other parties, including the Department of Conservation, community groups and non-government organisations over biodiversity provisions in RMA plans. This sort of litigation absorbs many months of time and work and is very costly for all parties concerned.
32. Protecting biodiversity on private land can be politically challenging for councils. Biodiversity provides public goods, but its protection may incur private costs to landowners. These include direct costs associated with protection (i.e. fencing) as well as opportunity costs if restrictions are placed on their use of land. This situation requires a degree of flexibility in the way that councils manage biodiversity, including the ability to use non-regulatory methods to achieve biodiversity goals. However the national mandate to maintain biodiversity requires some clear direction from central government on national-level expectations.
33. It can also be a challenge for councils to identify, manage, and monitor biodiversity on private land. Some councils have invested considerable time and effort building relationships with landowners for this purpose. This work needs to be recognised and supported in any national policy interventions.
34. Responsibility for maintaining biodiversity does not fall uniformly across all regions and districts. Some ecosystem types may be rare at a national level, but relatively common in some regions or districts. The local costs of protection, versus the national benefit may make it difficult for councils to justify protecting sites when applications for activities are made. In 2007, the government issued a statement of National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land. This identified the types of ecosystems and habitats most in need of protection. Local Government New Zealand has recently undertaken a survey of regional councils to determine the extent to which the national priorities influenced regional council's biodiversity programmes. The results indicated that the national priorities have not had a significant influence on plans, although some councils are starting to give effect to them.

A national policy statement on biodiversity

35. National policy statements contain objectives and policies on matters of national significance that must be "given effect" to in RMA planning documents and had "particular regard to" in resource consent decision making.

36. A NPS provides a decision-making framework within which local authorities formulate plan provisions and make decisions. Because a NPS focuses on policy objectives and decision-making frameworks, rather than just the content of the policy, provision or rules themselves, they allow local authorities some scope and flexibility in determining how they are going to achieve the policy objectives or work within the decision-making framework.

Progress towards a national policy statement on biodiversity

37. Government first began to discuss the prospect on a NPS on biodiversity in 1999. Three different versions were developed in the period between 2001 and 2005 but none was notified.

38. Instead of proceeding with the 2005 draft NPS Cabinet directed that non-statutory guidance be prepared. This was done in the form of the National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land, issued in April 2007.

39. In 2008, The Climate Change Response (Targets) Notice set a target to promulgate a NPS on biodiversity by 1 February 2011. In 2009, we agreed with the Māori Party that we would advance work on a NPS on biodiversity as part of our agreement on the Emissions Trading Scheme.

The 2010 proposed NPS on Indigenous Biodiversity

40. The proposed National Policy Statement on Indigenous Biodiversity is attached (Appendix 1). This proposed NPS sets out the Government's bottom-line expectations for protecting biodiversity. It adopts a supportive approach which recognises the existing good practices of local authorities, and provides direction only when required to secure base-line performance.

41. This NPS has been designed to strike a balance between protecting important biodiversity, recognising the rights and responsibilities of landowners, and the broader national interests that are served by providing landowners with flexibility in how they manage biodiversity on their land. This is achieved, in part, through the use of biodiversity offsets.

Objective

42. The objective of the proposed NPS on Indigenous Biodiversity is:

"To promote the maintenance of indigenous biological diversity by protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to encourage protection and enhancement of biodiversity values more broadly while:

- *supporting the best practice of local authorities*
- *recognising the positive contribution of landowners as guardians/kaitiaki of their land; and*

- *recognising that the economic, social and cultural well-being of people and communities includes making reasonable use of land.*"

43. The proposed NPS contains seven policies to achieve the objective.

Identification of 'significant' biodiversity

44. Policy two provides a list of criteria that all local authorities must regard as 'significant indigenous vegetation and significant habitat of indigenous fauna', when considering the effects of any matter under the RMA. These criteria are the same as those identified in the National Priorities for Protecting Rare and Threatened Biodiversity on Private Land.

45. The National Priorities identifies the rare and threatened environment types that are most vulnerable and in need of protection at a national level. The National Priorities do not aim to identify all significant biodiversity, for example including that which occurs at a local or regional scale. Therefore it does not identify all indigenous vegetation and habitats that should be protected by councils under section 6(c) of the Act.

46. Some council's have excellent criteria for identifying both locally and nationally significant biodiversity and there is case law which makes steps towards clarifying council's responsibilities in terms of s 6 (c) of the RMA. There is a risk that stating only some national level criteria in the NPS may result in councils facing pressure not to include criteria for biodiversity that is significant at other levels or for other reasons. This would limit the interpretation of 6 (c), which is not the intention of the proposed NPS.

47. To mitigate this risk the proposed NPS is carefully worded to make it clear that it does not restrict councils from applying broader criteria in their plans, if they determine that these are relevant to their obligations to protect areas of significant indigenous vegetation and the significant habitats of indigenous fauna under section 6 (c) of the Act. The preamble clearly states that some areas and habitats that are significant under section 6 (c) are not identified in the NPS. Councils are expected to use the identification criteria in policy two in addition to other criteria for identifying significance.

Managing for 'no net loss' of significant biodiversity values

48. Policy five requires local authorities to manage the effects of activities to ensure 'no net loss' of biodiversity within areas of significant indigenous vegetation and significant habitats of indigenous fauna. This can be achieved through district and relevant regional plans. Councils may also use methods outside of RMA plans, such as public ownership or covenants of land, so long as they are satisfied that these methods are adequate to achieve the overall goal of no net loss.

Biodiversity offsets

49. Policy five also introduces a standard process for the use of biodiversity offsets as a means of achieving no net loss in biodiversity values. Biodiversity offsets are defined the proposed NPS as:

"Measurable conservation outcomes resulting from actions designed to compensate for more than minor residual adverse effects on biodiversity arising from an activity after appropriate prevention and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure and ecosystem function."

50. Biodiversity offsetting provides a degree of flexibility in how land containing significant indigenous vegetation and habitats is managed, while also requiring no net loss of biodiversity values overall. Because the notion and application of biodiversity off-sets is still evolving, the proposed NPS contains two safeguards against inappropriate use.
51. The first safeguard is that policy five sets out a clear obligation for decision makers to only consider offsets once options to firstly avoid, then remedy and then mitigate effects have been exhausted. Offsetting can be considered as the final step in mitigating an effect. If the decision maker is not satisfied that the offset would adequately mitigate the effect, they can decline the application. Policy five also states that in some cases offsetting may not be an appropriate mitigation solution.
52. The second safeguard is that any biodiversity off-set under this policy needs to be developed in accordance with a set of principles which replicate those agreed internationally through the Business and Biodiversity Off-set Programme (BBOP). These principles are listed in Appendix 2 of the proposed NPS. Although high level in nature, they erect a meaningful threshold test that is considered appropriate at this time.
53. While we can make policies to guard against the inappropriate use of offsets, there is no way to guarantee the success of any offsetting activity. Ecosystems are complex and there is a risk that new habitat may fail to establish, or other unintended effects may arise. There is also a risk that the offsetting activity may not be fully carried out, due to unforeseen events. The Department of Conservation is currently leading a research programme to enhance the science related to offsetting and identify effective implementation techniques.

Promoting biodiversity values more broadly

54. Policy six recognises that biodiversity occurs across the landscape and various scales, and that the robustness and resilience of ecosystems requires more than protection of the best (potentially isolated) sites. It refers to a range of matters well recognised in ecology and in many existing RMA plans. This includes matters such as avoiding impediments to movement of migratory species and maintaining seasonal food sources, ecological linkages between sites, buffers around significant sites and riparian vegetation and effective control of pests and weeds.
55. Policy six outlines best practice in biodiversity management. Because it is worded as a 'should do', rather than a 'shall do' policy, policy six provides guidance, while maintaining discretion.

Costs and benefits of the Draft NPS on Biodiversity

56. The key benefits of the draft NPS are that it provides clear central government direction to regional and district councils to improve the way that biodiversity is managed under the RMA, while providing flexibility for councils to tailor their approaches to their specific regions and districts. It also provides direction on the approach councils should take when using biodiversity offsets, potentially preventing costly litigation on this issue. It would respond to the problem that there are some areas of the country where the adverse effects on biodiversity are not effectively managed through local authority plans.
57. Because the proposed NPS will require some councils to change their plans to give effect to its provisions, there will be some extra costs to councils. These costs have been very approximately estimated at \$4 million. Some councils will be required to put extra effort into identifying significant areas of indigenous vegetation and habitats. Landowners could also face opportunity costs and costs related to offsetting. The NPS has been designed to minimise these costs. Further analysis will be done before I next report back to Cabinet to understand the magnitude of any costs associated with this proposed NPS.

Alignment with the New Zealand Coastal Policy Statement

58. The second New Zealand Coastal Policy Statement (NZCPS) comes into effect on 3 December 2010. Further analysis is needed to ensure alignment between the NZCPS and the NPS on Biodiversity. This analysis will be conducted whilst the NPS is out for consultation, and incorporated into the next report back to Cabinet.

Supporting measures

59. It is important to monitor both how this NPS is being implemented by councils and also the state of the biodiversity that is being managed. A NPS cannot directly require councils to monitor biodiversity as it can only state objectives and policies. Therefore a programme for monitoring the implementation and effect of this NPS will need to be developed and implemented by central government at the time this NPS takes effect.
60. New Zealand does not have extensive experience with biodiversity offsets and the use of them can be uncertain. Local government representatives state if the NPS is to have a policy allowing for offsets then clear guidance on offsetting would need to accompany it. The international Business and Biodiversity Offsets Programme provides decision makers with resources to help with offsetting decisions. However, New Zealand-specific guidance would help smooth the introduction of this policy, as it is the first time it is being proposed at a national level. This guidance could be developed from the Department of Conservation's research into the science of offsetting.
61. A National Environmental Standard (NES) on biodiversity is another option for achieving national bottom-line consistency in biodiversity management. A NES under the RMA is a more directive tool that can either set specific standards for councils to meet or stipulate rules and methods that they must follow. It can replace the provisions of a regional or district plan and in this sense is a less flexible tool

than a NPS. However, a NES could be developed alongside this NPS to provide more clarity where needed; in particular it could establish a system for monitoring.

Public consultation process

62. I propose to use the alternative process in section 46A of the RMA for taking public submissions on this NPS. The alternative process does not use a Board of Inquiry. Instead, under the process that I intend to establish, officials release the NPS to the public, take submissions on it and report back to me on the submissions and with a revised NPS. They would also provide another cost/benefit analysis on the revised NPS under section 32 of the RMA. Officials are required to consider the same matters as a Board of Inquiry (sections 51 and 52) when reviewing the submissions and reporting on a revised NPS.

63. While the details are still to be confirmed, I propose a process that follows similar consultation on previous National Environmental Standards:

- a. Allow over three months for consultation and submissions: from the date when the NPS is released in December 2010 to March 2011.
- b. The NPS would be released with the attached explanation document, copies of previous drafts of a biodiversity NPS and questions to guide submissions. Supporting information including this Cabinet paper and previous draft versions of a biodiversity NPS would be published on the Ministry for the Environment's website.
- c. Regional meetings and hui would allow public discussion of the NPS. These would be located in major centres throughout the country.
- d. Officials would meet with representatives of important interest groups, such as local government, iwi groups, environmental groups, land owners and developers.

64. I intend to report back to Cabinet in July 2011 with a final NPS ready for promulgation.

Consultation

65. Te Puni Kōkiri, the Department of Conservation, the Ministry of Agriculture and Forestry, the Ministry of Fisheries, the Treasury, the Ministry of Economic Development, Land Information New Zealand and the Ministry of Foreign Affairs have been consulted as part of this proposal.

66. Local Government New Zealand and members of the Regional Council Biodiversity Forum have had input during development of the proposed NPS.

67. Under section 46 of the RMA, a letter was sent to all iwi authorities, councils, and relevant non-government organisations and industry bodies. This letter sought their views on what should be addressed in a biodiversity NPS. A summary of the 46 replies is attached (appendix 2). Respondents were generally supportive of a NPS but had a wide range of views on what it should address. A strong message was that it should not undermine the current efforts of councils.

68. Officials have had discussions on the general direction of the NPS with Forest and Bird, Federated Farmers, the Environmental Defence Society, the Iwi Advisors Group.

Departmental comment

69. The Department of Conservation notes that the recently approved New Zealand Coastal Policy Statement contains provisions to protect biodiversity values within the coastal environment. However, the proposed National Policy Statement on Indigenous Biodiversity proposes a different and arguably lower standard for the same biodiversity values.

70. The Department also notes that offsetting as an approach to biodiversity management is in its infancy and it may be premature to address offsetting in statutory policy. The Department is currently running a three year research programme investigating the feasibility of biodiversity offsetting in New Zealand, funded via the Royal Society Cross Department Research Pool (CDRP). The CDRP programme represents an opportunity for the Department along with other government departments and private sector participants to develop a robust, measurable and transparent biodiversity offsetting mechanism, providing best-practice methodologies and high quality assurance. In the Department's view it would therefore be preferable to put the National Policy Statement framework in place now, with a review time-tabled to add policies on offsetting after this programme of work has been completed.

Financial implications

71. There are no financial implications arising from this paper.

Human rights

72. The proposals contained in this Cabinet paper do not appear to be inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative implications

73. There are no legislative implications arising from this paper.

Regulatory impact analysis

Regulatory Impact Analysis requirements

74. A Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment and is attached to this paper.

Quality of the Impact Analysis

75. The Ministry for the Environment's Independent Regulatory Impact Analysis Panel has reviewed the RIS prepared by the Ministry for the Environment and associated

supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria. The Ministry's Panel consider this to be a preliminary RIS given that the proposed NPS will be subject to a public consultation process and accept that there are currently gaps in the evidence and analysis. The Ministry's Panel will review the updated analysis and RIS when final policy decisions are sought.

Consistency with Government Statement on Regulation

76. I have considered the analysis and advice of my officials, as summarised in the attached RIS and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest;
- will deliver the highest net benefits for the practical options available; and
- are consistent with our commitments in the Government statement "Better Regulation, Less Regulation".

Publicity

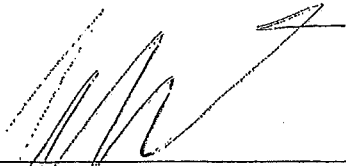
77. Once Cabinet has approved the release of the proposed NPS on Biodiversity and the accompanying Section 32 report, Regulatory Impact Statement, explanation document and other supporting information, for public consultation, this information will be published on the Ministry for the Environment's website, and key stakeholders will be notified. The draft NPS, Explanation Document and Section 32 report will also be available in hard copy.

Recommendations

78. The Minister for the Environment recommends that the Committee:

1. Note that a National Policy Statement on indigenous biodiversity is consistent with National Party's 2008 environmental policy manifesto and the National Party's 2009 agreement with the Māori Party on the Emissions Trading Scheme.
2. Note that the Climate Change Response (Targets) Notice (2008) sets a target to promulgate a NPS on biodiversity by 1 February 2011
3. Agree to release the draft National Policy Statement on Indigenous Biodiversity, and the accompanying Section 32 report and submission guide for public consultation.
4. Note that the Minister for the Environment will establish and then use the alternative process, as set out in section 46A of the RMA for taking public submissions on this NPS.

5. Invite the Minister for the Environment to report back, by 30 July 2011:
 - a. with a proposed National Policy Statement on Biodiversity
 - b. on how the effectiveness of the proposed National Policy statement will be monitored, including options for improving the monitoring of biodiversity loss.
 - c. on other measures that may be needed to support the implementation of the NPS.



Hon Dr Nick Smith
Minister for the Environment

17 / 11 / 2010

Appendix 1

*Appendix 1 contained the proposed National Policy Statement on Indigenous Biodiversity.
This document can be viewed at www.mfe.govt.nz/npsbiodiversity*

Appendix 2

Summary of responses

A total of 44 responses were received to the letter sent under section 46(a) of the RMA, on behalf of the Minister for the Environment, seeking views on what issues should be addressed in the National Policy Statement on Biodiversity. A summary of the types of organisations that responded is shown in Table 1.

Type of organisation	Number of responses received
Regional Councils	6
District and City Councils	14
Iwi agencies	6
Research	4
Non-government organisations	5
Industry organisations	3
Utility companies/ electricity generators	3
Other	3

There was general support for a National Policy Statement on biodiversity. Comments in support included:

- central Government providing national leadership and strategic direction on key biodiversity issues
- an important first step
- the promotion of minimum standards of protection
- the provision of greater clarity to local authorities to manage biodiversity
- the NPS as a overarching vehicle for the New Zealand Biodiversity Strategy (NZBS)
- supporting the promotion of biodiversity protection, management and enhancement

A number of organisations expressed concerns about a NPS although none were definitively opposed to the concept. These comments included:

- that a NPS would curtail the ability for local government and communities to develop local solutions

- a focus on nationally significant biodiversity and habitats will fail to deal with species and habitats at the district level that are not assessed as ‘significant’
- a minimum standard may undermine existing plans and programs where the standard is set at a higher level
- maybe counterproductive if there was a need to review existing regional and district policy and plans where much of the work related to biodiversity protection had already been done.
- would create further restrictions on private land
- a NPS would limit flexibility needed at the local level
- that there is already significant measures in place so a NPS is not required.
- a NES would be more appropriate for assessing nationally significant species and habitats

Issues that should be included in the NPS

While a broad range of issues were highlighted a number of issues that should be included in a NPS were common across a wide range of responders. These included:

Focus on indigenous biodiversity

The majority of responders supported a focus on indigenous biodiversity and habitats. A small number of submitters suggested that this should be extended to include exotic biodiversity and habitats, for example exotic forestry, pastoral land and urban environments, as they are important reservoirs for nationally significant species – kiwi in pine forests

Broaden focus

The NPS should be expanded beyond a focus on terrestrial species and habitats and include freshwater and marine environments. This highlights the interconnectedness and builds on the views of responders that there is a need to take an ecosystem/landscape/catchment perspective in managing biodiversity. The emphasis should also be expanded to ‘managing, restoration and enhancing’ rather than maintaining.

Clarification of roles and responsibilities

The majority of responders requested that guidance be provided as to responsibilities including for central Government, regional councils, district and city councils. A number of responders also asked for clarification where the protection and management of nationally significant biodiversity crosses existing political boundaries

Additional resourcing and compensation

Responders suggested that councils would require additional resourcing (financial and technical) to meet the assessment and monitoring requirements of the NPS. In addition, as the

focus was on private land, financial support/compensation is needed for landowners in meeting public good demands on their land.

Consistent language and clear definitions

A large number of responders requested clarification on a nationally-accepted definition of terms such as “significance”, “outstanding conservation values” and “significant natural areas”. Also need to ensure that the terms used are current and consistent.

Linkages to RMA and other regulatory mechanisms

A number of sections of the RMA were highlighted and clarification was sought as to how the NPS would relate to the following sections:

- s5 – restoration and enhancement not included
- s6(c) - guidance on what ‘nationally important biodiversity’ is, how is identified and how this relates to ‘significant indigenous vegetation and significant habitats of indigenous fauna. Direction about the meaning of ‘protection’.
- s7 – renewable energy development
- s30 – clarification about relation of NPS particularly to s30(ga) “the establishment, implementation, and review of objectives, policies, and methods for **maintaining** indigenous biological diversity”.
- s31 – does not direct councils to protect biodiversity but to control and effects on its maintenance. Clarification of differences between s6 and s31
- s35 – monitoring frameworks

Need to clarify linkages with other legislation including Wildlife Act (1953), Conservation Act (1987), and Fisheries Act (1983). Need to clarify linkages with other existing mechanisms, for example Biodiversity Condition Fund, Sustainable Management Fund and Emissions Trading Scheme.

Clear frameworks needed to determine significance and for monitoring, evaluation and reporting procedures

Currently there are a wide range of processes that are not consistent. The NPS needs to provide a nationally accepted assessment framework for determining ‘nationally significant biodiversity’ and consistent monitoring and reporting procedures.

Who is responsible for information relating to ‘nationally significant biodiversity’ that is contested?

Nationally significant vs regionally significant

A number of responders were concerned that a focus on ‘nationally significant biodiversity’ would have a negative impact on biodiversity assessed as significant at regional or district levels. Need to clarify the difference between national and regionally significant.

Need guidance on how to prioritise levels of significance

Private and public land

A number of responders suggested that the NPS needed to include public lands and not just private land

Off-setting

There were comments both for and against off-setting. Comments supporting off-setting recognised it as an important part of the resource management decision process. The RMA currently enables biodiversity offsets.

Comments where off-setting was not supported preferred the current approach of “avoid-remedy-mitigate” and which provides for ‘no net loss.’

NPS must provide clarity as to what constitutes an offset for biodiversity purposes. The NPS should provide direction to Councils on when, where and why this may be appropriate.

General comments

A number of general comments were provided across a wide range of submitters.

Impact on private rights in meeting public good

Issues raised include that private land is already subject to various protection measures – need to be clear what value a NPS will add. There needs to be a clear assessment of the impacts on private rights versus public interest and compensation for private interests for protecting public rights.

There are already a wide range of programmes and incentives enabling councils and private landowners to work together to protect biodiversity.

Does not restrict local solutions

A common concern was that the NPS does not restrict the ability of local councils and communities to develop local solutions for the protection and management of. Associated with this is the need to ensure that existing partnerships are not adversely affected and that guidance (through the proposed NPS) is provided on how new partnerships can be established.

Does not undermine existing plans and programmes

There was concern that the setting of a minimum standard in the proposed NPS does not undermine existing programmes (non-regulatory and regulatory) that have higher targets. A

number of councils, particularly those that have been through recent plan and policy review processes do not want the NPS to impact gains made, e.g. relationships with communities and Environment Court outcomes.

Treaty of Waitangi

Important that protection of tangata whenua rights as per the Treaty and other obligations is a central component of the NPS

Enable and encourage protection, restoration and enhancement

The NPS needs to highlight that invasive plant and animal species and habitat loss are the main causes of biodiversity loss. There is a need to expand the current 'protection' view in a specific site to expand this to a landscape, ecosystem perspective that focuses on protection, enhancement and restoration.

A summary of comments from individual submitters followed (and have not been released).

Appendix 3

Appendix 3 contained an evaluation of the proposed National Policy Statement on Indigenous Biodiversity under section 32 of the Resource Management Act 1991. This document can be viewed at www.mfe.govt.nz/npsbiodiversity